



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2005

Mr. Jeffrey Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-00227

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216579.

The Town of Flower Mound (the "town") received a request for "any and all arrest records or reports" pertaining to a named person, including a specified arrest report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by the common-law right to privacy, which protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However,

¹We note that some of the information in Exhibit C, which we have marked, is not responsive to the present request and need not be released.

information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis. In addition, when a requestor asks for information relating to a particular incident, the request does not implicate *Reporters Committee* because complying with the request does not require the governmental body to compile unspecified records.

The requestor in this case asks for all arrest records or reports on the named individual. When a requestor asks for all information concerning a certain person, we believe that the individual's right to privacy has been implicated to the extent the named individual is a possible suspect, defendant, or arrestee. Therefore, to the extent the town maintains records that depict the named individual as a suspect, arrestee or criminal defendant, such information is excepted from disclosure in its entirety under section 552.101 and the common-law right to privacy.

However, in this instance, the requestor is, in part, also requesting a specified arrest report. Therefore, we do not agree that this part of the request is for unspecified information regarding the named individual. Accordingly, we conclude that the request for the specified police report does not implicate the named individual's right to privacy. Consequently, the town may not withhold the specified arrest report under section 552.101 in conjunction with the common-law right to privacy on the basis of the holding in *Reporters Committee*.

This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). The town must withhold the information we have marked in Exhibits C and D under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information in Exhibit F involves juvenile conduct that occurred after September 1, 1997. Only juveniles at least 10 years old and less than 17 years of age when the conduct occurred are covered by section 58.007. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). It does not appear that any of the exceptions in section 58.007 apply; therefore, Exhibit F is confidential pursuant to section 58.007(c) of the Family Code. The town must withhold Exhibit F from disclosure under section 552.101 of the Government Code.

The town asserts that a portion of the information in Exhibit C is confidential under section 772.218 of the Health and Safety Code. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The information in Exhibit C includes originating addresses and telephone numbers furnished by a service supplier. Therefore, assuming that the town is part of an emergency communications district established under section 772.118, 772.218, or 772.318 of the Health and Safety Code, the addresses and telephone numbers the town has highlighted in Exhibit C are confidential under section 772.218 and must be withheld from disclosure under section 552.101 of the Government Code.

You also claim that the specified arrest report in Exhibit B is excepted from disclosure under section 552.108. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information

would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in Exhibit B relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude that the release of the specified arrest report in Exhibit B would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining information in the specified offense report in Exhibit B from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Finally, section 552.130 excepts from disclosure certain motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the town must withhold from disclosure the section 552.130 information you have marked in Exhibit C, except where we have noted otherwise.

In summary, to the extent the town maintains records that depict the named individual as a suspect, such information is excepted from disclosure in its entirety under section 552.101 and the common-law right to privacy. The town must withhold 1) the information we have marked in Exhibits C and D under section 552.101 in conjunction with common-law privacy; 2) Exhibit F under section 552.101 in conjunction with section 58.007 of the Family Code; 3) the addresses and telephone numbers the town has highlighted in Exhibit C, assuming that the town is part of an emergency communications district, under section 552.101 in conjunction with section 772.218 of the Health and Safety Code; and 4) the section 552.130

information the town has marked in Exhibit C. With the exception of front page offense report information, the town may withhold the specified arrest report in Exhibit B. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

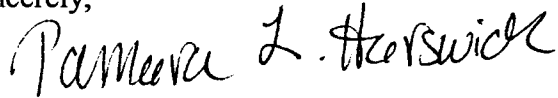
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 216579

Enc. Submitted documents

c: Mr. Buddy Bonner
1800 Timbercreek Drive
Flower Mound, Texas 75028
(w/o enclosures)